IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 16977 OF 2003(U)

PETITIONER:

CHERIAN MATHEW, KURICHIYIL HOUSE,
KADAPPATTOOR P.O., VIA PALA, KOTTAYAM
DISTRICT.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON

RESPONDENTS:

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1. INTELLIGENCE OFFICER (I.B),
AGRL.INCOME-TAX & SALES TAX DEPARTMENT,
ERNAKULAM.

2. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

GOVERNMENT PLEADER SRI. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 16977/2003

ORDER ON I.A. NO. 2177/2003 IN WP(C) 16977/2003

// DISMISSED //

25.5.2007 SD/-
P.R. RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	COPY OF TE ORDER OF THE 1ST RESPONDENT.
EXT.P2	COPY OF THE ORDER OF THE DY. COMMISSIONER, COMMERCIAL TAXES, KOTTAYAM.
EXT.P3	COPY OF THE ORDER OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.
EXT.P4	COPY OF THE ORDER OF THE ADDL. SALES TAX OFFICER -II, PALA.
EXT.P5	COPY OF THE ORDER OF THE KERALA AGRL. INCOME-TAX & SALES-TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOTTAYAM.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN, J.

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W.P.(C) NO. 16977 OF 2003

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DATED THIS, THE 25TH DAY OF MAY, 2007.

J U D G M E N T

Petitioner was a dealer in Indian Made Foreign Liquor and also an assessee under the Kerala General Sales Tax Act. Proceedings were initiated against him under Section 45A of the said Act for the year 1993-94 alleging that he suppressed purchase of liquor from the Beverages Corporation and the resultant sales thereof and thereby evaded payment of turnover tax under the Act. It was alleged that the petitioner had purchased Indian Made Foreign Liquor from the Beverages Corporation during the relevant year, purchase value of which comes to Rs. 38,27,461.30. But in the book of accounts originally maintained, he however disclosed only a purchase value of 19,96,867/- and thus suppressed a purchase of Rs. 18,30,594.30 and thereafter certain corrections and insertions were also made in the book of accounts.

2. The purchase as such to the tune of Rs. 38,27,461.30 was not disputed. But the petitioner showed only a sales turnover of Rs. 29,15,654/- as per the books of accounts maintained for the year 1993-94. The

corresponding correction made in the purchase value however did not reflected in the sales value. There was no stock register maintained. The assessee had no case that the actual quantity purchased could not be sold during the relevant year and as a result, the balance quantity was still lying as stock. The Intelligence Officer, in such circumstances, found that an equal amount of the sales turnover should be added on the total sales turnover of the assessee and thus arrived at a sales turnover of Rs. 76,54,922.60. After deducting an amount of Rs. 29,15,654/- towards conceded turnover, the suppressed turnover was rounded to Rs. 47,39,277.60. Turnover tax due on the suppressed sales turnover was calculated at Rs. 1,42,178.40 and thus a penalty of Rs. 2,84,000/- was imposed by the Intelligence Officer, on the petitioner, which was twice the tax due on the suppressed sales turn over. As against the imposition of this penalty as per Ext.P1, the assessee preferred a revision before the Deputy Commissioner which was dismissed as per Ext.P2 order. The second revision to the Commissioenr of Commercial Taxes also ended in dismissal. Aggrieved by this, petitioner has come up with this writ petition.

3. Ext.P2 is the order passed by the Deputy Commissioner and Ext.P3 is the order passed by the Commissioner of Commercial Taxes. Ext.P2 is dated 29.11.1999 and Ext.P3 is dated 24.9.2002 According to the

learned counsel for the petitioner, the profit estimated as 100% for imposition of penalty is highly excessive. In this connection, reliance is placed on the order of assessment Ext.P4 which was subsequently modified by Ext.P5 order passed by the Tribunal, the final fact finding authority. In the assessment proceedings, the profit earned by the petitioner during the relevant year in question from the sale of Indian Made Foreign Liquor was fixed at 40% which was reduced to 15% by the Appellate Tribunal, by Ext.P5 order. Though the petitioner contended before the Commissioner of Commercial Taxes while the revision was pending that the penalty imposed based on the estimation of profit earned by the petitioner was highly excessive, the Commissioner did not accept the said contention only for the reason that the petitioner did not produce any materials before him in support thereof. It could be seen that Ext.P3 was passed by the Commissioner on 24.9.2002 while confirming the order of penalty whereas Ext.P4 was passed on 16.1.2001 and Ext.P5 order of the Tribunal was passed subsequently on 19th August, 2002. Therefore, based on the materials now produced before this Court, it is submitted that the penalty imposed, at any rate, is highly excessive.

4. The learned Government Pleader, appearing on behalf of the State, however, would contend that both the penalty proceedings and assessment

proceedings are totally different and the suppression as found by the Intelligence Officer as confirmed by the Deputy Commissioner and Commissioner of Commercial Taxes in the subsequent revisions filed, cannot be assailed on valid grounds. It is true that both the proceedings are different and the finding could be based on the evidence collected and relied on in the concerned proceedings. At the same time, while quantifying the amount of penalty to be imposed, it was based merely on an estimation of the profits that would have been earned by the assessee in the trade. There was no material as such for such estimation. The Assessing Officer estimated the profit at 40%. The final fact finding authority, namely, the Tribunal reduced the same to 15% and the said order has become final. If so, the estimation of the profit at 100% for the purpose of quantification of penalty alone is highly excessive and irrational.

5. In such circumstances, adopting the same percentage of profit as fixed by the Tribunal in Ext.P5, relief has to be moulded. Rs. 38,27,461.30 is the total purchase value and if 15% is added to the said amount, total amount will come to nearly Rs. 44,01,580/- (rounded to 45 lakhs) as against which the conceded sales turnover is only Rs.29,00,000/-. The tax on the balance 16,00,000/- at the rate of 3% will work out to Rs. 48,000/-. Double the amount of such tax will come to Rs. 96,000/-. Taking into account the

over all facts and circumstances, an amount of Rs. 1,00,000/- (One Lakh) by way of penalty is sustained and the balance is deleted. Exts.P1, P2 and P3 orders are accordingly modified sustaining the levy of penalty of Rupees One Lakh only. The balance tax in excess of Rs. 1,00,000/- as determined by the authorities will stand deleted.

The writ petition is thus allowed in part.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.

W.P.(C) 16577/2003

J U D G M E N T

25TH MAY, 2007.